

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date: **January 8, 2007**

Time: 8:30am

Place: **Room 5112**, State Office Bldg

Members

(Attendees = x)

Commission Members

xChairperson, Darwin L. Johnson, *Wasatch* xJoyce W. Clark, *Washington*

xDavid M. Lattin, *Salt Lake*

xGlen W. Roberts, *Utah*

xR. Curt Webb, *Cache*

Department Staff

xJohn E. "Mickey" Braun, Jr.
Ass't Commissioner

xPerri Babalis
AG Legal Counsel

Darrel Powell
Dir. Market Conduct

xMark Kleinfeld
Admin. Law Judge

Gerri Jones
MC Examiner

Sheila Curtis
MC Examiner

xJilene Whitby
PIO/Recorder

Guests

Jeff Wiener of United General Title

Commissioner Michie, UID

Brad Tibbitts, UID

MINUTES

I. **Welcome and Introductions** / Darwin L. Johnson, Chair

Darwin began the meeting at 8:45 a.m.

II. **Adoption of Minutes of Previous Meeting**

- Joyce made a **motion** to accept the December 6, 2006 minutes and Curt seconded it. The vote was unanimous in its favor.
- Minutes of December 20, 2006 Emergency Meeting: Glen asked how the department became aware of violations by Precision Title? Mark did not know. Glen said he was aware of improper transactions by this company a year ago. Glen **moved** to accept the minutes and Darwin seconded it. The vote was unanimous.
- Glen asked how they could discuss specific names in an open meeting? Perri said the Open Meetings Act allows the Commission to go into a closed session to discuss a specific individual or case. David said there would need to be a standard or evidentiary proof that something illegal had taken place before that is done. Mark agreed. He noted that all agencies are audited on a regular basis. Curt asked if it was prejudicial for the Commission members to talk about a particular instance and then act as judge and jury? Mark felt that it was the role of any regulatory agency to discuss something before taking action, but there is a fine line. Perri suggested that instead of Commission members passing on information to the department the person with the information should give it to the department directly. Perri read Section 31A-2-404(2)(i) from the Code which gives the Commission broad powers. Glen suggested following up with Sheila and Gerri regarding the progress of specific cases rather than discussing them in the meeting. Darwin noted that they could also follow the progress by reviewing the department's monthly enforcement report. Perri said they could also speak in generalities during meetings.

III. **Review & Concur with Licensee Report**

Joyce made a **motion** to concur with the report and Glen seconded it. The vote was unanimous

IV. **Number of Cases Open & Closed / Mickey**

Darwin expressed concern about some workmen, like painters, whose liens had lapsed and as a result were not getting paid. Curt and Glen felt this was an issue the workmen needed to be responsible for and was not one the Commission should be involved with.

V. **Review & Concur with Enforcement Case Report**

Mark reported there were no finalized cases.

VI. **Old Business**

- **Status of R592-2 / Mickey**

- Jilene reported that the changes were put into effect December 22, 2006.

- **Escrow Instructions**

- Darwin asked the Commission's opinion as to whether or not splits closings would ever be eliminated completely? Curt didn't know, Joyce didn't think so, Glen didn't know and Dave didn't think so in the absence of a rule.
 - Commission member discussed the escrow instructions they were using.
 - Copies of two different escrow instructions were copied and passed to the Commission to use as a foundation for an industry-wide set of instructions. They agreed that the instructions should include: who is paying what; specify what costs should be shared; what happens to the deed; share information about company PR; require both parties to acknowledge responsibility for disbursements; and other responsibilities.
 - Curt suggested Glen put together the first draft of the escrow instructions. Glen agreed.

- **Darwin welcomed** Commissioner Michie and Life, Property and Casualty Director, Brad Tibbitts. (9:30 a.m.)

- **Discuss Flip Bulletin / Glen**

- Glen's preliminary draft had been included in the Commission's packet.
 - Curt asked, "If a person does not use money from a previous transaction is it a flip? Do you have to disclose? Is the disclosure required in the first scenario on page 3? Curt suggested that the third paragraph on page one, dealing with disclosures, be deleted.
 - Curt **moved** to approve the bulletin the way it was written with the exception of paragraph three. David seconded it.
 - Glen suggested changing the wording in the last bullet of the addendum on page 3. After "C" delete "that he isn't in title to" and add, "which buyer "B" does not yet hold title to."
 - Commissioner Michie asked if the wording "may do escrow" in 31A-23a-406(1), as referenced on page 1 was complete. It was determined it was.
 - It was also noted that the Commissioner's name on the third page was incorrect. It should be D. Kent Michie
 - Commissioner Michie suggested changing the year above his name to 2007.
 - Curt **moved** to accept the bulletin as amended and David second it. The vote was unanimous.
 - Darwin asked the department to make the changes to the bulletin. Perri agreed to make the changes.
 - David asked what impact the bulletin would have? Darwin said it would notify or remind the industry of the law. Curt said it would alert them to how the law would be enforced. Glen said it would connect enforcement to the Good Funds Statute.

- The Commission asked the department to send the bulletin to agencies and put it on the web.
- **Brian Brunson request / Darwin**
 - Darwin provided Brian's background. He left a title company because of back problems and established his own brokerage firm in Provo. The Talon Group has asked him to help them rebuild Crossroads Mall. The insurance law does not allow an individual to have an active title and real estate license at the same time. Representative Dougall's emails to Darwin, the department and the Commissioner indicate that the Insurance Department is the only agency that will not allow two active licenses.
 - Darwin asked if Brunson closed out his trust account at his business could his wife go to work for another agency? Commissioner asked what the reasoning is behind our law and is there reason for narrowing it? Or would that invite abuses? Curt asked if title was the only group the department regulated that prohibited dual licenses? Mickey said they were. Curt said that was probably because one person could write as well as refer business. Joyce noted that Mr. Brunson had started work with her when this law was put into effect and he is aware of it. Darwin said there would be no conflict of interest in Brunson's case but opening the door may cause problems.
 - Mickey noted that the history of this section of the rule is in the Commission's packet.
 - Curt did not know why Mr. Brunson needed a license to assist Talon with searches. Glen expressed concern about carving out an exception in the law.
 - Curt offered to talk with Representative Dougall to help him understand the law and reasons behind it. All agreed.
 - Commission members disagreed with whether or not Brunson could be paid for providing his services to Talon if he was not licensed. Perri said that R590-153-3 applies to all.
 - Darwin asked if Brunson could inactivate his real estate license and work with Talon Group and then re-activate it? The Real Estate Division allows it.
 - Joyce made a **motion** that the Rule stay as it is, Darwin seconded it and the vote was unanimous in its favor.
- **Enforcement - next subject on list of Priorities**
 - Glen did not see that there was much the Commission could do to help the department in enforcement matters. We can encourage the department to report the cases are being investigated and solved.
 - **Curt noted that the table of investigations still does not include the number of cases investigated and closed in a month.** He would like to see the number of complaints about different types of problem. Then with that information the Commission can look at the rule and see if it makes sense. Mickey noted that Curt was right. In other words, the Commission needs to know the percent of investigations that deal with each prohibited act in the Rule, then the Commission can determine if the prohibited items should continue to be prohibited or changes should be made.
 - Curt asked what the next item on the list of priorities was? Perri said it was "Controlled Business." Glen suggested looking at the marketing rule. Curt agreed. It is what the industry would like us to look at. **Joyce asked that the marketing rule be put on the agenda for next time.** Perri suggested pulling out of the Unfair Marketing Practices Rule, R590-154, those parts dealing with title. Mickey also suggested doing the same to the advertising rule, R590-130. Mickey said the department would compile those parts that deal with title from each rule.

VII. New Business

- **Where have February's Meeting**

Due to the legislature being in session during February it was decided to move February's meeting. Glen will check to see if a room would be available at Bachman Title. Joyce made the **motion** to change the meeting day to the second Monday of the month at 8:30 a.m. and Curt seconded it. The vote was unanimous.

- **Constitutionality of our statute**

Perri updated the Commission on the case dealing with the constitutionality of Section 31A-23a-407 of the Insurance Code. One of the parties has motioned the judge to reopen and reconsider his ruling and additional affidavits. The judge agreed.

VIII. **Other Business from Committee Members**

IX. **Reminder:** Next Liaison Meeting is at 2 p.m. today at Bachman Title.

X. **Adjourned:** At 10:30 a.m. Glen moved to adjourn and Joyce seconded it. The vote was unanimous.

XI. **Next Meeting:** Monday, February 12, 2007, 8:30 a.m. at Bachman Title.

Next Meetings

8:30 a.m.

~~January 8, 2007~~

February 12, 2007

March 12, 2007

April 9, 2007

May 14, 2007

June 11, 2007

July 9, 2007

August 13, 2007

September 10, 2007

October 9, 2007

November 12, 2007

December 10, 2007